



For the attention of
Prof. Dr. Reto M. Hilty,
Dr. Roland Knaak
Prof. Dr. Annette Kur

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Dear Madam, Dear Sirs,

We refer to your letter of 17 November 2009 in relation to the “study on the functioning of the European trademark system”. We are convinced that the Max Planck Institute with its undisputed reputation and expertise in the field of Intellectual Property will conduct the study in the most efficient way and appreciate the possibility to provide our comments.

BUSINESSEUROPE represents the interests of a wide range of trademark “users” ranging from SMEs to large multinational companies.

We are of the opinion that European trademark systems must serve all companies and that the study offers a unique chance to establish an optimal European trademark system as a combination of national trademarks, Community trademarks and the link to the international system offered through the Madrid system.

There is no general rule that large companies prefer the Community system over national trademarks and SMEs prefer the converse. To the contrary, the choice of system to achieve the best trademark protection depends on many factors. Decisions on which system to choose are made on a case-by-case basis.

What is nevertheless needed, is harmonised trademark legislation throughout the EU (at both Community and national level) which might only differ insofar as national particularities require so but which may not touch basics. A new (or amended) European Trademark Directive might form the basis for this. By this also predictability of decisions would be ensured to the benefit of users as well as consumers.

Furthermore, harmonisation with respect to procedures and practices throughout the respective Offices dealing with trademarks both at Community as well as national level is essential. Requirements relating to filing trademarks, examination, renewal, changes,

opposition etc. are still quite different with respect to the Community Trademark (CTM) and national trademarks. The same applies to rules and procedures.

Besides this harmonisation at the legislative level, dissemination and exchange of information between national offices themselves and also between national offices and the Office for Harmonisation in the Internal Market (OHIM) is a crucial requirement to further strengthen the cooperation and reliability for the benefit of the users. Similarly exchange of information and cooperation has to be fostered between the administrative authorities and the respective courts involved in trademark matters.

The CTM and OHIM have proved to provide a modern and ever improving trademark protection system over the last decade. Nonetheless, taking into account the fact that the legislation has now existed for more than 15 years there is room for review and possible improvement. The success that the CTM has shown makes it (and OHIM) a perfect benchmark in many aspects for other authorities. This benchmarking is according to our understanding a basic step in the way of improving the European trademark systems, at both Community and national levels.

We remain at your disposal for any further clarifications and we are looking forward to further working together with you in the framework of the study also for the announced interview(s) to provide detailed information and comments to issues raised in section 5 of the study.

Yours sincerely,



Jérôme P. Chauvin
Director
Legal Affairs Department
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